

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARIA ROCCO,

Docket #:1:22-cv-2118

Plaintiff,

against

WAKEFERN FOOD CORP.
and NYC SHOPRITE ASSOCIATES, INC.,

Defendants.

-----X

PETITION FOR REMOVAL

The petitioners, WAKEFERN FOOD CORP. and NYC SHOPRITE ASSOCIATES, INC., respectfully petition this court as follows:

1. WAKEFERN FOOD CORP. and NYC SHOPRITE ASSOCIATES, INC., are defendants in a civil action commenced in the Supreme Court of the State of New York, County of Kings bearing Index Number 500465/2022 E. A copy of the Summons and Complaint is attached hereto as **Exhibit "A"**.
2. WAKEFERN FOOD CORP. is domiciled in, and hence a citizen of New Jersey under whose corporate laws it was founded and operates and has its principal place of business in New Jersey .
3. NYC SHOPRITE ASSOCIATES, INC. is domiciled in, and hence a citizen of Delaware under whose corporate laws it was founded and operates and has its principal place of business in Delaware.
4. Upon information and belief plaintiff, MARIA ROCCO, resides at 2148 62nd Street, Brooklyn, New York 11204, is a citizen and resident of Kings County, State of New York.
5. This action was commenced on or about January 6, 2022, by the purchase of an index number. Thereafter the Summons and Complaint was forwarded the New York State Secretary of State being received on January 14, 2022. Service of the

summons and complaint by the New York State Secretary of State upon these parties, WAKEFERN FOOD CORP. and NYC SHOPRITE ASSOCIATES, INC., was made on or about January 19, 2022.

6. Significant for the purposes of the jurisdiction of this court is that no monetary amount or ad damnum was included in or set forth in the complaint. Nor was any other writing served by plaintiff upon defendants advising of the actual monetary amount being sought of the defendants.
7. Together with its answer interposed in the State Court action served on January 25, 2022, defendants annexed a demand pursuant to CPLR §3017 requiring such a response as to the monetary amount that is being sought of defendants in this action. See **Exhibit "B"**
8. That plaintiff's counsel did delay serving a response to the discovery demands served by this office, and it was not until on or about March 23, 2022, that responses to defendants' demands were received from plaintiff's counsel dated March 17, 2022, which set forth a demand for damages, that being in the amount of \$1,000,000.00. Said amount being in excess of the jurisdiction amount set forth as a threshold for diversity purposes. **See Exhibit "C"**.
9. Accordingly, this petition is timely as it was filed pursuant to 28 U.S.C. §1446(b), within 30 days of receipt of plaintiff's demand for monetary damages in this action. The time for filing has not expired.
10. This action is being removed to Federal Court based upon diversity jurisdiction pursuant to 28 U.S.C. §1332(a).
11. As noted above the parties to this action are citizens of different states.
12. This action is therefore one which may be removed to this Court pursuant to 28 U.S.C. §1441(a) because this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a).
13. Venue is proper pursuant to 28 U.S.C. §1441(a).

14. Pursuant to 28 U.S.C. § 1446(d) these parties WAKEFERN FOOD CORP. and NYC SHOPRITE ASSOCIATES, INC., has this day, served upon the Clerk, Supreme Court, Kings County notification of the filing of this petition. A copy of the Notice of Removal filed in the Supreme Court is attached hereto as **Exhibit "D"**.

WHEREFORE, pursuant to this provisions of 28 U.S.C. §§1441 and §§1446 defendants respectfully request that this action be removed from the Supreme Court of the State of New York, Kings County and henceforth proceed in this Court.

Dated: Mineola, New York
April 13, 2022

By: *Bruce A. Torino*
BRUCE A. TORINO (BT 7772)
Attorneys for Defendants -
WAKEFERN FOOD CORP.
and NYC SHOPRITE ASSOCIATES, INC.
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Mineola, NY 11501
(516) 747-4301 Fax: (516) 747-5956

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this April 13, 2022 to LICATESI LAW GROUP, LLP, 423 RXR Plaza, East Tower, Uniondale, New York 11556.

Bruce A. Torino
BRUCE A. TORINO

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TORINO & BERNSTEIN, P.C.

*Attorneys for Defendants
WAKEFERN FOOD CORP.
and NYC SHOPRITE ASSOCIATES, INC.*

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Our File Number: 007745-176718-GB01